

Per Curiam

BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE ET AL. *v.* McCREARY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 84-277. Argued February 20, 1985—Decided March 27, 1985  
739 F. 2d 716, affirmed by an equally divided Court.

*Marvin E. Frankel* argued the cause for petitioners. With him on the briefs was *Marc D. Stern*.

*Marvin Schwartz* argued the cause for respondents and filed a brief for respondents Scarsdale Crèche Committee et al. *Vincent K. Gilmore* filed a brief for respondents McCreary et al.\*

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE POWELL took no part in the decision of this case.

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\*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Burt Neuborne*, *Charles S. Sims*, *Norman Dorsen*, and *Steven R. Shapiro*; for the American Jewish Committee et al. by *Samuel Rabinove*; and for the Anti-Defamation League of B'nai B'rith et al. by *Ruti G. Teitel*, *Meyer Eisenberg*, *Justin J. Finger*, and *Jeffrey P. Sinensky*.

*Solicitor General Lee*, *Acting Assistant Attorney General Willard*, and *Deputy Solicitor General Bator* filed a brief for the United States as *amicus curiae* urging affirmance.

*Steven Frederick McDowell* filed a brief for the Catholic League for Religious and Civil Rights as *amicus curiae*.

UNITED STATES ET AL. *v.* LOCKE ET AL.APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA

No. 83-1394. Argued November 6, 1984—Decided April 1, 1985

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA) establishes a federal recording system that is designed to rid federal lands of stale mining claims and to provide federal land managers with up-to-date information that allows them to make informed land management decisions. Section 314(b) requires that mining claims located prior to FLPMA's enactment be initially recorded with the Bureau of Land Management (BLM) within three years of the enactment, and § 314(a) requires that the claimant, in the year of initial recording and "prior to December 31" of every year after that, file with state officials and the BLM a notice of intention to hold a claim, an affidavit of assessment work performed on the claim, or a detailed reporting form. Section 314(c) provides that failure to comply with either of these requirements "shall be deemed conclusively to constitute an abandonment" of the claim. Appellees, who had purchased mining claims before 1976, complied with the initial recording requirement but failed to meet on time their first annual filing requirement, not filing with the BLM until December 31. Subsequently, the BLM notified appellees that their claims had been declared abandoned and void due to their tardy filing. After an unsuccessful administrative appeal, appellees filed an action in Federal District Court, alleging that § 314(c) effected an unconstitutional taking of their property without just compensation and denied them due process. The District Court issued summary judgment in appellees' favor, holding that § 314(c) created an impermissible irrebuttable presumption that claimants who fail to make a timely filing intended to abandon their claims. Alternatively, the court held that the 1-day late filing "substantially complied" with § 314(a) and the implementing regulations.

*Held:*

1. Section 314(a)'s plain language—"prior to December 31"—read in conjunction with BLM regulations makes clear that the annual filings must be made on or before December 30. Thus, the BLM did not act *ultra vires* in concluding that appellees' filing was untimely. Pp. 93-96.

2. Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost. Pp. 97-100.